

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CHARLOTTE KING,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
EMPLOYMENT SECURITY,

Respondent.

No. 35710-1-II

UNPUBLISHED OPINION

Bridgewater, P.J. — Charlotte King appeals the Washington State Employment Security Department's (Department) decision to deny her request for unemployment benefits after she voluntarily left her employment as a caregiver for George Henry Bartell, Jr., because she no longer felt safe in her working environment. We affirm the commissioner's decision.

FACTS

King worked as a caregiver for Bartell from April 2001 to September 30, 2005. King's actual employer was the Bartell Trust. Jean Barber, Bartell's daughter, served as Bartell's principal supervisor.

The daily care that King provided Bartell included mental and physical stimulation, meal preparation, doctor's office visits, stocking medical supplies, and maintaining Bartell's vehicle.

Bartell is an 89-year-old man who is approximately 5 feet 6 inches tall, weighing around 145 pounds. Under normal circumstances, Bartell is a kind and gentle person but he now suffers from dementia. At times, he becomes agitated and more aggressive than usual.

King described the first time that she learned of Bartell's aggression, which happened approximately one year and four months before she decided to quit. During another caregiver's night shift, Bartell pushed the female caregiver into the wall. When the caregiver informed King of the incident, King met with Barber and another principal. Barber was "shocked" about the incident because such behavior was out of character for Bartell. Comm'r Record (CR) at 14. In response, Barber decided that all night shift caregivers should be male so that they were more likely able to handle any physical requirements.¹

King next described an incident during which Bartell had "taken a swing" at Jason Stevens, another caregiver. CR at 15. Apparently, Bartell put his shoes on in the middle of the night and when Stevens bent down to remove the shoes, Bartell took a swing at him. Bartell's attempted swing did not connect with Stevens, who "brushed it off." CR at 31. Stevens informed Barber a few days after the incident, describing it not as a real problem but, rather, "almost making a joke out of it." CR at 31.

King testified that Stevens told her that on at least three occasions, Bartell attempted to grab the steering wheel while Stevens was driving him to and from appointments, causing them to change lanes. King testified that Bartell would get agitated while riding with her regarding the

¹ The record reveals that King did work a few more night shifts, but Barber testified that she did not schedule "Charlie" (King) for night shifts and any such shifts that King did work were to accommodate either King's or another caregiver's personal situations. CR at 32.

direction they were driving, but he never attempted to grab the wheel while she was driving. There is no evidence in the record that King or Stevens informed Barber of these allegations before the hearing.

In June 2005, King used a steak knife to open some boxes that she had received in the mail. Bartell took the knife and pointed it at King, demanding that she give him his car keys. She testified that it was not unusual for Bartell to ask for his car keys because he often forgot, due to the dementia, that he had not driven in years. King kept her distance and spent between 10 and 15 minutes calming Bartell down and convincing him to put the knife down. King did not report the incident to Barber because, after discussing it with Stevens, they decided that if she informed Barber, the family would take Bartell out of his house and place him in an institution, which they did not want to see happen.

On September 13, 2005, King informed Bartell that she needed to change his colostomy bag. She stated that she attempted to get Bartell's cooperation for half an hour, during which he became agitated. King then told Bartell, "[W]e need to get this done or we're going to have a mess we need to clean up." CR at 13. Bartell became agitated and started swinging, making contact with King's chest with his fist. King described the punch as setting her back and getting her attention, but not enough to knock her to the floor.

The following day, King sent an e-mail to Barber describing the punching incident. In the e-mail, she also described the knife pointing incident and an additional incident during which another caregiver thought that Bartell might hit her while she was giving him a shower. Barber responded by sending an e-mail to King and also by e-mailing all of the caregivers, asking them to

call or e-mail her any time that Bartell becomes physical so that the family could track the behavior and make sure that both Bartell and the caregivers were safe. Barber closed the e-mail with the statement, “We can not [sic] take appropriate steps if we do not know if it is happening.” CR at 61.

Three days later on September 17, 2005, King submitted her two-week-resignation notice by e-mail. The body of the e-mail is as follows:

In light of the most recent physical action towards myself and the other caregivers by your father, I feel that the physical safety is currently and would continue to be in question – As I said in my pervious [sic] e-mail I’m sure it is as important to you, as it is to me to know he is safe and the people who care for him are as well –

I would like to take this opportunity to “Thank You” for allowing me to provide quality care for your parents – your Mother for just over two years and your Father for four and a half years how [sic] – I have given my all to provide the best care I could – I have truly enjoyed this time and will miss your Father Immensely.

CR at 60.

Barber responded with the following:

You will be missed. You have become such a “fixture” within our family. We truly appreciate the incredible dedication you have brought to the job and even more so to our family. You have taken incredible care with both of our parents and we have relied on you explicitly.

We all know that everything has a season and a time. I would not want any physical harm to come to you at the hand of my father. I also think that your place right now is in Spokane more than Seattle so that you can be there for your grandmother. I would not want your dedication to our family to stand in the way of your giving the kind of care and attention to your grandmother that she deserves.

CR at 60.² Barber testified that, other than the swinging incident with Stevens, her father

² Barber testified that she gave King extra vacation time in September to visit her grandmother in Spokane after her grandmother had a stroke. When King returned, she worked only one shift

punching King in the chest was “the only instance [she had] been told that he’s ever actually physically done something to somebody.” CR at 30.

King filed for unemployment benefits with the Department. The Department denied her request, reasoning that King failed to show good cause for leaving work based on an alleged deterioration of working conditions. King appealed the Department’s denial to an administrative law judge (ALJ), who determined that King failed to show good cause for quitting. The ALJ further noted that King did not show she was actually in jeopardy or her circumstances constituted an emergency and that King failed to show that her working conditions had deteriorated. King appealed the ALJ’s decision to a Department commissioner, who affirmed the ALJ’s decision, finding that King:

did not meet her burden to show that her workplace safety deteriorated, that she reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time so as to constitute good cause for leaving employment pursuant to RCW 50.20.050(2).

CR at 90-91.

King appeals.

ANALYSIS

I. Good Cause

King argues that she satisfied each of the requirements to establish good cause to quit her job based on worksite safety deterioration. The Washington Administrative Procedure Act (APA) governs review of this case. RCW 34.05.510; RCW 50.32.120. We sit in the same position as the trial court while reviewing the agency action under the APA. *Tapper v. Employment Sec.*

before the punching incident.

Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). We consider the commissioner's decision as *prima facie* correct, and King bears the burden of proving otherwise. RCW 34.05.570(1)(a); RCW 50.32.150.

We review issues of law de novo and are entitled to substitute our judgment on legal issues for that of the administrative body. *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 407, 914 P.2d 750 (1996). But we accord substantial weight to the agency's view of the law it administers. *William Dickson*, 81 Wn. App. at 407. Under RCW 50.32.095, the commissioner may designate certain commissioner's decisions as precedent, which we consider as persuasive authority. *Martini v. State, Employment Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981 (2000).

Although King asserts that she is assigning error to the commissioner's factual findings "to the extent that the [order] can be read as positing findings of fact rather than conclusions of law," she fails to inform us which findings she challenges and fails to provide argument in support of such allegation. Br. of Appellant at 21. As such, the commissioner's factual findings are verities before us. *Tapper*, 122 Wn.2d at 407. Accordingly, our review is limited to whether findings of fact supported the commissioner's conclusions of law. *In re the Disciplinary Proceeding Against Brown*, 94 Wn. App. 7, 13, 972 P.2d 101 (1999).

The purpose of the Employment Security Act, Title 50 RCW, is to provide unemployment benefits to any unemployed person unless that person is statutorily disqualified from receiving benefits. *Verizon Nw, Inc. v Wash. Employment Sec. Dep't*, 164 Wn.2d 909, 912, 916, 194 P.3d 255 (2008). One such disqualification occurs when an individual voluntarily leaves work without

good cause. RCW 50.20.050(2)(a). King acknowledges that she voluntarily quit her employment and, thus, the only question before us is whether she had good cause to do so. RCW 50.20.050(2)(a).

RCW 50.20.050(2)(b) lists 10 specific factual situations that constitute good cause for voluntarily quitting employment. King asserts that she satisfied RCW 50.20.050(2)(b)(viii), which provides:

The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time.

RCW 50.20.050(2)(b)(viii); Br. of Appellant at 12. Accordingly, King bears the burden to prove three things: (1) that her worksite safety deteriorated, (2) that she provided her employer with notice of such safety deterioration, and (3) that her employer failed to correct the hazards within a reasonable period of time. RCW 50.20.050(2)(b)(viii). The third prong is dispositive here as King has clearly failed to prove that Barber did not correct the hazards within a reasonable period of time.

II. Failure To Correct

King contends that she proved that she notified Barber of her safety concerns one year and four months before she resigned. King severely misstates RCW 50.20.050(2)(b)(viii)'s third prong requirement. RCW 50.20.050(2)(b)(viii) requires King to prove that "the employer failed to correct the hazards within a reasonable period of time."

WAC 192-150-130(2)(b) defines "[r]easonable period of time:"

(2) To establish good cause for quitting work under this section, you must notify your employer of the safety issue and give your employer a reasonable

period of time to correct the situation. For purposes of this section:

...
(b) “Reasonable period of time” means the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue. In addition:

(i) For health or safety issues that present imminent danger of serious bodily injury or death to any person, your employer must take immediate steps to correct the situation;

...
(c) “Serious bodily injury” means bodily injury which creates a probability of death, or which causes serious permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ whether permanent or temporary.

WAC 192-150-130(2).

King’s assertion that Barber had one year and four months to respond ignores the fact that Barber did respond by changing the night schedule for the caregivers. King does not contend that this schedule change did not alleviate concerns of working with Bartell at night.

King next alleges that Barber had two weeks from the time she turned in her two-week notice to take remedial action but that Barber failed to do so. The record indicates that once Barber received King’s e-mail in which she learned of the punching incident, the knife incident, and the shower incident, Barber responded via e-mail the same day to King. She informed King that she would have a meeting with her siblings to discuss the situation as soon as she returned from taking her daughter to college. In addition, that same day, she e-mailed the other caregivers asking them to contact her by phone or e-mail to inform her if Bartell became physical in any way. She stated that the family needed to track these kinds of behaviors because, although they wanted their father to have the best care possible, they would not do so at the expense of the caregivers’ safety. She closed the e-mail by stating, “We can not [sic] take appropriate steps if we do not

know if it is happening.” CR at 61.

On September 20, 2005, Barber e-mailed Stevens to discuss the work schedule. She indicated that she had asked a family member to communicate with Dr. Bender about Bartell’s aggression so that they could determine whether it was temporary or permanent and whether it was related to his rapid decline.

According to the record, Barber learned of Bartell’s alleged aggression via King’s e-mail and Barber immediately started investigating the situation by inquiring with other caregivers and by scheduling a talk with the doctor. King’s last day was on September 30, 2005.

We hold that King failed to prove that Barber failed to correct the hazards within a reasonable period of time. RCW 50.20.050(2)(b)(viii). King’s failure to inform Barber of the alleged escalation in aggression until three days before King turned in her two-week notice precluded Barber from taking any remedial action that could have ensured a safe working environment for King. King and Stevens consciously chose not to inform Barber of the knife event. In fact, the only incident that any of the employees informed Barber of following the pushing incident one year and four months earlier was the occasion when Bartell attempted to take a swing at Stevens, which he later described to Barber almost as a joke. King failed to give Barber a reasonable amount of time to remedy the situation, instead opting to voluntarily quit. Because of our holding on this issue, we do not address worksite safety deterioration or reporting. We affirm the commissioner’s decision.

III. Attorney Fees

We deny King's attorney fees request because we are not reversing or modifying the commissioner's decision.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, P.J.

We concur:

Armstrong, J.

Hunt, J.